same state, and there no longer existed the ground for removal provided by the statute. I know of no practice of the court to authorize the granting of the plaintiff's motion, to be hereafter described in the future orders and processes issued in this case as of St. Johnsbury, Vermont. Although I see no particular objection to it, I see no necessity for granting the motion.

Petition denied.

Supreme Court of Oregon.

J. N. DOLPH *v.* HARLOW BARNEY.

Where the certificate of an officer to acknowledgment of a deed, appears on its face to be in substantial compliance with the statute, parol evidence to impeach it is inadmissible, unless there are allegations in the pleadings to warrant it.

The law presumes that a person acting in a public office was regularly appointed to it, and also that official duty has been regularly performed.

EJECTMENT. At the trial plaintiff deduced his title through a patent from the United States to one John Waymire, then by a deed from Waymire and Clarissa his wife to M. S. Riggs and thence by sundry mesne conveyances to himself. Defendant offered to introduce evidence tending to show that Clarissa Waymire did not sign the same freely and voluntarily, and that she did not acknowledge the same separate and apart from her husband. The respondent's counsel objected, and the court sustained the objection, which ruling is charged as error.

P. C. Sullivan, R. P. Boise and *Daly & Myers*, for appellant, cited 4 John. 161, 469; 12 Id. 469; 1 Id. 498; 2 Wend. 308; 10 Minn. 427; 18 Md. 305; 23 Cal. 259; 2 Phil. Ev. 587, 590, 591; 1 Greenl. Ev. 289; 3 Washburn 192.

E. C. Bronaugh and *W. W. Thayer*, for respondent, cited 1 Oregon 17; 8 Wall. 109; 65 N. C. 619; 42 Ill. 518; 18 Iowa 90.

The opinion of the court was delivered by

MCARTHUR, J.[1]—That a deed may be set aside or the enforcement of its terms successfully resisted on the ground of fraud or imposition, when the deed is itself the subject of litigation in a

[1] Several other questions were argued and decided in this case, but they are omitted as of merely local interest.—ED. AM. LAW REG.

court of equity, is a well settled and a familiar principle. But in an action of ejectment we are of opinion that no evidence should be received to invalidate an acknowledgment of a deed, when such acknowledgment meets the requirements of the statute. The certificate of acknowledgment to the deed of John Waymire and Clarissa his wife to Riggs, comes up with the bill of exceptions, and an inspection thereof shows that it conforms to the statute. In all such cases the deed may be read in evidence without further proof thereof. (General Laws, p. 518, sect. 22.)

We have examined the authorities relied upon by appellant's counsel. Some of them seem to support the position taken, but most of them will, upon examination be found to be cases where the evidence offered was designed to supply proof of facts necessary to give validity to the acknowledgment. With these we have nothing to do, the others we will proceed to examine.

The case of *Jackson* v. *Humphrey*, 1 John. 497, was an action of ejectment tried in 1806. The principal point in controversy was in relation to the admission of certain testimony, tending to show that the judge, before whom the proof of the execution of a certain deed was taken, was at the time of taking the same, out of the jurisdiction of the state. The testimony was declared admissible. The report of the case is very meager, and the opinion is not so apparently well considered as to be ranked as an approved precedent.

Jackson v. *Schoonmaker*, 4 John. 160, was an action of ejectment tried in 1809. A deed was introduced and its admission objected to, because there was no evidence of possession accompanying it, and therefore not to be received as an ancient deed. An offer was also made to show that one of the grantors was *non compos mentis* at the time of the acknowledgment. The court held that the certificate of the proof or acknowledgment of a deed taken before a judge is not conclusive, but the party affected by the deed may contest its validity, and the force and effect of the formal proof.

Jackson v. *Hayner* and *Jackson* v. *Ferguson*, 12 John. 468, were actions of ejectment tried in 1815. The title of both parties was derived from the same source. The question in these cases was whether a certain assignment endorsed on a certain lease was fraudulent and void. The point decided was, that where an illiterate man is induced to sign a deed by a misrepresentation of its nature and contents, the deed is void.

Jackson v. *Perkins*, 2 Wend. 304, was an action of ejectment tried in 1829. The material question was as to the delivery of the deed. The only evidence of its delivery was the proof of its execution, by one of the subscribing witnesses before a master in chancery for the purpose of putting it upon record. Among other things, the court declared that proof or acknowledgment, is *ex parte*, and any person who may be affected by the deed, may at any time, question its validity, and show that in fact it was duly executed or delivered. The cases in 4 and 12 Johnson, *supra*, are cited in support of this position.

These cases were all tried under the general issue, and as near as can be ascertained, under a statute which declared, that "neither the certificate of acknowledgment, or of proof, nor the record, is conclusive; but may be rebutted, and the force and effect thereof, contested by any party affected thereby. If the contestant shows that the proof was taken on the oath of an interested or incompetent witness, neither the conveyance nor record can be received in evidence until established by other competent proof:" (1 Rev. Stat. 759, sect. 17.) We have been unable to find any cases in New York, since adoption of the code, holding the doctrine of the cases just noticed.

Edgerton v. *Jones*, 10 Minn. 427, is not in point. That was an action brought by the plaintiff against A. B. Jones, Mary M. Jones, his wife, and others, to foreclose a mortgage purporting to be executed by defendants, A. B. and Mary M. Jones. The only issues made in the pleadings material to the points decided, are in regard to the execution and acknowledgment of the mortgage by defendant, Mary M. Jones. The cause was tried by a referee, who admitted parol testimony, to contradict the official certificate of the acknowledgment of the mortgage. This the court held not to be error. We presume that in a suit in equity, and upon issue joined by the pleadings it would not be contended that evidence tending to contradict a certificate of acknowledgment would not be admissible. In the opinion in the case just cited, it is stated that the question presented, was fully discussed and decided in *Dodge* v. *Hollingshead*, 6 Minn. 25. That case has not been furnished us, and we have been unable to ascertain the length to which it goes. It is evident, however, that the opinion did not meet with the unqualified approval of the court in *Edgerton* v. *Jones*, for after referring to *Dodge* v. *Hollingshead*, it is said,

"We acquiesce in the conclusion arrived at, so far as the case at bar is concerned."

We are of opinion that the true rule upon this question, is that laid down in *Graham* v. *Anderson*, 42 Ill. 514. That case was much stronger than the one before us, for there were allegations touching privy examination of the wife, &c. The court, after discussing some other features of the case, said: "But another more important question remains, and that is, in the absence of fraud or imposition, in proving the execution of a deed by a wife, is parol evidence admissible in an action of ejectment to impeach the certificate? We have examined the authorities on this point, and we think where the certificate of the privy examination of a married woman is in the form required by statute, it is not sufficient, in order to impeach it, to allege that there was no private examination, that she did not acknowledge the deed as her act and deed, that she did not release her homestead right. There must be some allegation of fraud or imposition practiced toward her, some fraudulent combination between the parties interested, and the officer taking the acknowledgment:" *Ridgely* v. *Howard*, 3 H. & McH. 321; *Jamison* v. *Jamison*, 3 Whart. 457; *Hartley* v. *Frost*, 6 Texas 208. *Green* v. *Godfrey*, 45 Maine 25, which was an action of ejectment, is to the same effect.

We are therefore of opinion that in an action of ejectment where the certificate of the officer as to the acknowledgment appears on its face to be in substantial compliance with the statute, parol evidence to impeach it is inadmissible, unless there are allegations in the pleadings to warrant it. Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF OHIO.[1]

SUPREME COURT OF PENNSYLVANIA.[2]

SUPREME COURT OF VERMONT.[3]

AGENT.

Performance by Deputy.—One having authority to sign the name of another to a subscription paper, may procure a third to do it in his presence: *Norwich University* v. *Dana*, 47 Vt.

[1] From E. L. DeWitt, Esq., Reporter; to appear in 25 Ohio State Reports.

[2] From P. F. Smith, Esq., Reporter; to appear in 77 Pennsylvania Reports.

[3] From Hon. J. W. Rowell, Reporter; to appear in 47 Vermont Reports.